

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ZACHARY FEATHERSTONE,

Plaintiff,

v.

PACIFIC NORTHWEST
UNIVERSITY OF HEALTH
SCIENCES,

Defendant.

No. 1:14-CV-3084-SMJ

**STIPULATED PROTECTIVE
ORDER**

One or more of the parties has requested the production of documents or information that at least one party considers to be or to contain confidential information, and that are subject to protection under Federal Rule of Civil Procedure 26(c).

The parties agree that good cause exists to protect the confidential nature of the information contained in documents, interrogatory responses, responses to requests for admission, or deposition testimony. This action may concern (a) medical information protected as confidential by HIPAA or the ADA, (b) information that is governed or protected by the Family Educational Rights and Privacy Act, (c) reasonable and legitimate expectations of privacy of third-party

1 applicants to Pacific Northwest University of Health Sciences' College of
2 Osteopathic Medicine, (d) academic and accommodation decisions made by
3 PNWU regarding individuals other than Featherstone, (e) personal financial
4 information (i.e. a tax return) in which Featherstone has a reasonable expectation
5 of privacy, and (f) financial information of PNWU which is not publicly available.
6 The parties agree that the entry of this Stipulated Protective Order ("Protective
7 Order") is warranted to protect against public disclosure of such documents and
8 information.

9 Based upon the above stipulation of the parties, and the Court being duly
10 advised, the Court grants the protective Order.

11 Accordingly, **IT IS HEREBY ORDERED:** The Stipulated Protective
12 Order, **ECF No. 46**, is **GRANTED**.

13 **1.** All documents, testimony, and other materials produced by the
14 parties in this case and labeled either "Confidential" or "Attorneys'
15 Eyes Only" shall be used only in this proceeding.

16 **2.** Use of any information or documents labeled either "Confidential" or
17 "Attorneys' Eyes Only" and subject to this Protective Order,
18 including all information derived therefrom, shall be restricted solely
19 to the litigation of this case and shall not be used by any party for any
20 business, commercial, marketing or other purpose. This Protective

1 Order, however, does not restrict the disclosure or use of any
2 information or documents lawfully obtained by the receiving party
3 through means or sources outside of this litigation. Should a dispute
4 arise as to any specific information or document, the burden shall be
5 on the party claiming that such information or document was
6 lawfully obtained through means and sources outside of this
7 litigation.

8 **3.** The parties, and third parties subpoenaed by one of the parties or
9 appearing voluntarily, may designate as “Confidential” or
10 “Attorneys’ Eyes Only” documents, testimony, written responses, or
11 other materials produced in this case if they contain information that
12 the producing party has a good faith basis for asserting falls into one
13 of the categories set forth above and is confidential under the
14 applicable legal standards. The party shall designate each page of the
15 document with a stamp identifying it as “Confidential” or
16 “Attorneys’ Eyes Only,” if practical to do so.

17 **4.** If portions of documents or other materials deemed “Confidential” or
18 “Attorneys’ Eyes Only” or any papers containing or making
19 reference to such materials are filed with the Court, they shall be filed
20 under seal and marked as follows or in substantially similar form:

1 CONFIDENTIAL

2 IN ACCORDANCE WITH A PROTECTIVE ORDER, THE
3 ENCLOSURE(S) SHALL BE TREATED AS
4 CONFIDENTIAL AND SHALL NOT BE SHOWN TO ANY
PERSON OTHER THAN THOSE PERSONS DESIGNATED
IN PARAGRAPH 7 OF THE PROTECTIVE ORDER.

5 or

6 ATTORNEYS' EYES ONLY

7 IN ACCORDANCE WITH A PROTECTIVE ORDER, THE
8 ENCLOSURE(S) SHALL BE TREATED AS FOR
9 ATTORNEYS' EYES ONLY AND SHALL NOT BE
SHOWN TO ANY PERSON OTHER THAN THOSE
PERSONS DESIGNATED IN PARAGRAPH 8 OF THE
PROTECTIVE ORDER.

10 If a party is filing a document that it has itself designated as
11 “Confidential” or “Attorneys’ Eyes Only,” that party shall reference
12 this Stipulated Protective Order in submitting the documents it
13 proposes to maintain under seal. If a non-designating party is filing a
14 document that another party has designated as “Confidential” or
15 “Attorneys’ Eyes Only,” then the non-designating party shall file the
16 document under seal. If the non-designating party makes a request in
17 writing to have the document unsealed and designating party does not
18 file, within ten calendar days, a motion that shows good cause to
19 maintain the document under seal, then the Court shall unseal the
20 document. Before seeking to maintain the protection of documents

1 filed with the Court, a party must assess whether redaction is a viable
2 alternative to complete nondisclosure.

3 **5.** Within thirty (30) days after receipt of the final transcript of the
4 deposition of any party or witness in this case, or within thirty (30)
5 days of execution of this Protective Order in the case of depositions
6 predating the execution of this Protective Order, a party or the
7 witness may designate as “Confidential” or “Attorneys’ Eyes Only”
8 any portion of the transcript that the party or witness contends
9 discloses confidential information. If a transcript containing any
10 such material is filed with the Court, it shall be filed under seal and
11 marked in the manner described in paragraph 4. Unless otherwise
12 agreed, all deposition transcripts shall be treated as “Confidential”
13 until the expiration of the thirty-day period.

14 **6.** “Confidential” or “Attorneys’ Eyes Only” information and
15 documents subject to this Protective Order shall not be filed with the
16 Court or included in whole or in part in pleadings, motions, briefs,
17 etc., filed in this case, except when any portion(s) of such pleadings,
18 motions, briefs, etc. have been filed under seal by counsel and
19 marked in the same manner as described in paragraph 4 above. Such
20 sealed portion(s) of pleadings, motions, briefs, documents, etc., shall

1 be opened only by the Court or by personnel authorized to do so by
2 the Court.

3 **7.** Use of any information, documents, or portions of documents marked
4 “Confidential,” including all information derived therefrom, shall be
5 restricted solely to the following persons, who agree to be bound by
6 the terms of this Protective Order, unless additional persons are
7 stipulated by counsel or authorized by the Court:

8 a. Counsel of record for the parties, and the administrative staff
9 of counsel's firms.

10 b. Any party to this action who is an individual, and every
11 employee, director, officer, or manager of any party to this
12 action who is not an individual, but only to the extent
13 necessary to further the interest of the parties in this litigation.

14 c. Independent consultants or expert witnesses (including
15 partners, associates and employees of the firm which employs
16 such consultant or expert) retained by a party or its attorneys
17 for purposes of this litigation, but only to the extent necessary
18 to further the interest of the parties in this litigation.

19 d. The Court and its personnel, including, but not limited to,
20 stenographic reporters regularly employed by the Court and

1 stenographic reporters not regularly employed by the Court
2 who are engaged by the Court or the parties during the
3 litigation of this action, together with any necessary
4 interpreters.

5 e. The authors and the original recipients of the documents.

6 f. Any court reporter or videographer reporting a deposition.

7 g. Employees of copy services, microfilming or database
8 services, trial support firms and/or translators who are engaged
9 by the parties during the litigation of this action.

10 h. Any interpreter, captionist, or other individual hired to provide
11 auxiliary aids and services in connection with this litigation.

12 **8.** Use of any information, documents, or portions of documents marked
13 “Attorneys’ Eyes Only,” including all information derived therefrom,
14 shall be restricted solely to the persons listed in paragraphs 7(a), 7(c),
15 7(d), 7(e), 7(f) and 7(g), unless additional persons are stipulated by
16 counsel or authorized by the Court.

17 **9.** Prior to being shown any documents produced by another party
18 marked “Confidential” or “Attorneys’ Eyes Only,” any person listed
19 under paragraph 7(c) or 7(f) shall agree to be bound by the terms of
20 this Order by signing the agreement attached as Exhibit A.

1 **10.** Whenever information designated as “Confidential” or “Attorneys’
2 Eyes Only” pursuant to this Protective Order is to be discussed by a
3 party or disclosed in a deposition, hearing, or pretrial proceeding, the
4 designating party may exclude from the room any person, other than
5 persons designated in paragraphs 7 and 8, as appropriate, for that
6 portion of the deposition, hearing or pretrial proceeding.

7 **11.** Each party reserves the right to dispute the confidential status
8 claimed by any other party or subpoenaed party in accordance with
9 this Protective Order. If a party believes that any documents or
10 materials have been inappropriately designated by another party or
11 subpoenaed party, and that they do not fall within the categories
12 identified as being appropriate for protection herein, that party shall
13 confer with counsel for the designating party. As part of that
14 conferral, the designating party must assess whether redaction is a
15 viable alternative to complete non-disclosure. If the parties are
16 unable to resolve the matter informally, a party may file an
17 appropriate motion before the Court requesting that the Court
18 determine whether the Protective Order covers the document in
19 dispute. Regardless of which party files the motion, the party seeking
20 to protect a document from disclosure bears the burden of

1 establishing good cause for why the document should not be
2 disclosed. A party who disagrees with another party's designation
3 must nevertheless abide by that designation until the matter is
4 resolved by agreement of the parties or by order of the Court.

5 **12.** The inadvertent failure to designate a document, testimony, or other
6 material as "Confidential" or "Attorneys' Eyes Only" prior to
7 disclosure shall not operate as a waiver of the party's right to later
8 designate the document, testimony, or other material as
9 "Confidential" or "Attorneys' Eyes Only." The receiving party or its
10 counsel shall not disclose such documents or materials if that party or
11 counsel knows or reasonably should know that a claim of
12 confidentiality would be made by the producing party. Promptly
13 after receiving notice from the producing party of a claim of
14 confidentiality, the receiving party or its counsel shall inform the
15 producing party of all pertinent facts relating to the prior disclosure
16 of the newly-designated documents or materials, and shall make
17 reasonable efforts to retrieve such documents and materials and to
18 prevent further disclosure.

19 **13.** Designation by either party of information or documents as
20 "Confidential" or "Attorneys' Eyes Only," or failure to so designate,

1 will not constitute an admission that information or documents are or
2 are not confidential or trade secrets. Neither party may introduce into
3 evidence in any proceeding between the parties, other than a motion
4 to determine whether the Protective Order covers the information or
5 documents in dispute, the fact that the other party designated or failed
6 to designate information or documents as “Confidential” or
7 “Attorneys’ Eyes Only.”

- 8 **14.** Upon the request of the producing party or third party, within 30 days
9 after the entry of a final judgment no longer subject to appeal on the
10 merits of this case, or the execution of any agreement between the
11 parties to resolve amicably and settle this case, the parties and any
12 person authorized by this Protective Order to receive confidential
13 information shall return to the producing party or third party, or
14 destroy, all information and documents subject to this Protective
15 Order. Returned materials shall be delivered in sealed envelopes
16 marked “Confidential” to respective counsel. The party requesting
17 the return of materials shall pay the reasonable costs of responding to
18 its request. Notwithstanding the foregoing, counsel for a party may
19 retain archival copies of confidential documents.

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EXHIBIT A

I, _____, have been advised by counsel of record for _____ of the protective order governing the delivery, publication, and disclosure of confidential documents and information produced in this litigation. I have read a copy of the protective order and agree to abide by its terms.

Signed

Printed

Date